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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission

WASHINGTON, D.C. 20554

In re Applications of

GAF BROADCASTING COMPANY

For Renewal of the License
of FM Broadcasting Station WNCN
New York, New York

CLASS ENTERTAINMENT
AND COMMUNICATIONS, L.P.

For a Construction Permit
for a New FM Station on
104.3 MHz at New York, New York

MM Docket No. 93-54

File No. BRH-910201WL

File No. BPH-910430ME

To: The Commission

REQUEST FOR EXPEDITED ACTION

GAF Broadcasting Company, Inc. ("GAF"), the licensee of WNCN(FM), New York, New York, hereby requests expedited action on the Joint Motion To Stay Proceeding Pending Action On Settlement Agreement now pending before the Commission in the above-captioned comparative renewal proceeding. In support, the following is shown:

On June 23, 1993, GAF and a competing applicant, Class Entertainment and Communications, L.P. ("Class"), submitted a Joint Motion For Approval of Agreement For Dismissal of Applicant. That Motion requested the Commission to grant a waiver of Section 73.3523 of the FCC rules to approve a settlement between them, pursuant to which Class

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would dismiss its application in return for consideration of an amount less than its legitimate and prudent expenses reasonably incurred in the preparation, filing and prosecution of its application. The parties pointed out that the settlement represented a recognition of changed circumstances by Class, so that grant of a waiver would not create any broad precedent, and that GAF remains fully qualified to continue as licensee. Moreover, it is clear that grant of the settlement will conserve the resources of the parties, including the existing licensee, as well as the Commission itself.

Also on June 23, 1993, the parties filed their Joint Motion To Stay Proceeding Pending Action On Settlement Agreement. That Motion requested a 60 day stay of the procedural dates in the comparative hearing, during FCC consideration of the proposed settlement. As the Joint Motion pointed out, without a stay, the applicants would be required to expend considerable time and resources in preparing for a case which they desire to settle.¹

Five weeks later, the Commission still has not acted upon either Joint Motion. While the proposed settlement was premised upon conserving the parties' resources as well as the Commission's, important procedural dates have continued to arrive in the proceeding. Thus, since requesting a stay, GAF has been required to finalize and submit the testimony of 15

¹On June 15, 1993, GAF and Class filed a Joint Request For Approval of Agreement For Dismissal of Court Appeal, which requested FCC approval of a separate settlement, pursuant to which Class would dismiss its appeal of a previous FCC order before the D.C. Circuit. On June 24, the court granted the parties' motion for demand of the record in that appeal to

public witnesses. GAF has also been required to review its files, identify and produce over 400 pages of documents (to date) responsive to a pending document request. On July 20, 1993, the Presiding Judge released a Memorandum Opinion and Order establishing the deponents Class may examine. Moreover, the Judge previously set August 9 -- just one week away -- for the commencement of depositions. Counsel will be required to expend a great deal of time and effort in preparation of those depositions.

As set forth in the Joint Motion for Approval of Agreement for Dismissal of Applicant, GAF and Class believe that approval of the settlement would serve the public interest without undermining the Commission's policy announced in the First Report and Order in BC Docket No. 81-742, 66 RR 2d 708 (1989), recon., 67 RR 2d 1515 (1990). Accordingly, GAF urges prompt Commission action on that request as well. However, we recognize that the Commission has never approved a settlement involving reimbursement (albeit only partial) of an applicant's expenses prior to an Initial Decision under the new policy. Thus, it is recognized that the Commission may be unable to reach the merits of the settlement request under the tight timetable currently faced in this matter.

Accordingly, at a very minimum, GAF respectfully requests that the Commission act expeditiously on the pending Joint Motion to stay the comparative hearing pending FCC consideration of the settlement agreement. A grant of the stay would allow all affected parties, including the Commission staff and the Presiding Judge, to conserve their resources, while the Commission addresses the merits of the settlement request. Whether the Commission ultimately approves or disapproves the settlement request, immediate action to hold the hearing in abeyance will at least prevent all affected parties from expending further

efforts in a hearing proceeding which may become moot. Failure to act on this request at least before August 9, however, would be tantamount to a denial. If GAF is required to go forward with depositions on August 9, then a fundamental premise of the settlement agreement, which was intended to avoid incurring unnecessary renewal hearing expenses, would be undercut and no longer be valid. Immediate Commission consideration of this matter is therefore respectfully requested.

Respectfully submitted,

GAF BROADCASTING COMPANY,
INC.

Arthur J. J. J.

CERTIFICATE OF SERVICE

I, Eve J. Lehman, a secretary at the law firm Fleischman and Walsh, hereby certify that I have this 2nd day of August, 1993 placed a copy of the foregoing "Request For Expedited Action" in U.S. First Class Mail, addressed to the following:

*Administrative Law Judge
Joseph Chachkin
Federal Communications
Commission
2000 L Street, N.W., Room 226
Washington, D.C. 20554

*Mr. Gary Schonman, Esquire
Hearing Branch
Mass Media Bureau
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Mr. Glenn A. Wolfe
Chief, EEO Branch
Mass Media Bureau
Federal Communications
Commission
2025 M Street, N.W., Room 7218
Washington, D.C. 20554

Morton Berfield, Esquire
Cohen & Berfield
1129 20th Street, N.W.
Washington, D.C. 20036


*John I. Riffer, Esquire
Associate General Counsel - Adjudication
Office of the General Counsel
Room 610
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

*Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

*Chairman James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

*Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

* By hand


Eve J. Lehman